Supreme Court, U.S.
F I L E D
OCT 14 1994
OFFICE OF THE CLERK

No. 94-207

(2)

In The

Supreme Court of the United States

October Term, 1994

GRUPO PROTEXA, S.A. A COMPANY ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF MEXICO, AND CONDUX S.A. DE C.V., A COMPANY ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF MEXICO,

Petitioners,

vs.

ALL AMERICAN MARINE SLIP, A DIVISION OF MARINE OFFICE OF AMERICAN CORPORATION, A NEW YORK CORPORATION, AFIA, A DELAWARE CORPORATION, AND CIGNA, A DELAWARE CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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9 pp

INTERVENING MATTER

On or about September 15, 1994, the Mexican Ministry of Foreign Affairs ("MoFA") sent a letter to the Legal Advisor of the United States Department of State specifically referencing this matter. On information and belief, a similar letter was sent to the Clerk of the United States Supreme Court on or about October 14, 1994. (A copy of the letter to the State Department is attached as Appendix "A".) The letters unequivocally affirm the Mexican government's determination that the Huichol removal order was a valid exercise of its jurisdiction in its exclusive economic zone under Mexican and international law. The MoFA letters state, in pertinent part that . . .

> . . . for all the reasons stated in the September 15, 1986 opinion letter of the Director General de la Marina Mercante of the Secretariat of Communications and Transport, we respectfully submit that the Mexican government acted within its authority under Mexican and International law, when it ordered Grupo Protexa to raise and remove the Huichol II from the Campeche Oil Fields.[1]

The MoFA letters also contain an independent legal analysis affirming the validity of the removal order and the Mexican government's determination of its jurisdiction under Mexican and international law.

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1. The September 15, 1986 "opinion letter of the Director General de la Marina Mercante of the Secretariat of Communications and Transport" referred to in the MoFA letter is quoted verbatim and discussed at pp. 6 - 8 of the Petition.

SUPPLEMENTAL LEGAL ARGUMENT

The central thrust of the Petitioners' act of state argument is that the Third Circuit's separation of powers analysis was unnecessary and erroneous. International comity and full faith and credit, which remain fundamental underpinnings of the act of state doctrine, required the courts below to defer to the Mexican government's determination that the removal order was valid under Mexican law. The comity considerations implicated in this case are brought into even sharper focus by the MoFA letters. This unequivocal reaffirmation of the Mexican government's determination of the validity of its exercise of jurisdiction should be respected. To do otherwise risks the parochialization of the American legal system.

In addition to buttressing Petitioner's comity argument, the MoFA letters eliminate the foundation upon which the Third Circuit's separation of powers analysis of the act of state doctrine was constructed. The Third Circuit Court acknowledged "that the act of state doctrine arguably is applicable" to the Huichol removal order. Despite Mexico's substantial interest in this case, the Third Circuit held that there must be some showing of a "separation of powers" concern or effect on the "conduct of foreign affairs" that must be demonstrated before the act of state doctrine is triggered. The MoFA letters demonstrate that flouting the Mexican's government's order will have an impact on foreign relations between the respective governments. The MoFA letters point out that the United States is bound not to undermine the United Nations Convention on the Law of the Sea, and that this decision of the Third Circuit casts doubt on the United States' previous position acknowledging Mexico's sovereign rights and jurisdiction to explore, exploit, conserve and manage the natural resources of the exclusive economic zone, where the Huichol sank.

The full significance of the MoFA letters requires some

understanding of the structure of Mexican government. In Mexico, the President of the Republic exercises his authority through the corresponding "Departments of State". These are the United States' equivalent of cabinet level departments. The Mexican Department of State with responsibility for, among other things, administration of the federal maritime zones, including the exclusive economic zone, is the Secretariat of Communications and Transportation. Within the Secretariat of Communications and Transportation, the Department of the Merchant Marine has jurisdiction over maritime accidents and preservation of the marine environment. In 1986, when Petitioners, at the request of the underwriters, asked the Mexican government for clarification of the legal basis for the removal order, the result was the September 15, 1986 letter from the most senior officer in the Merchant Marine. The letter carried the official seal and approval of the Secretariat of Communications and Transportation.

The Ministry of Foreign Affairs is the equivalent of the United States' State Department. Its intervention in this matter is a clear signal that the Mexican Government does not consider this to be merely an issue of an insurance dispute between private parties. The Ministry of Foreign Affairs, like our own State Department, would not intervene in litigation in American courts unless an important national interest was at stake. By way of comparison, the MoFA letter is the equivalent of our own State Department writing the Mexican Supreme Court to establish the validity of a removal order issued by our Coast Guard in our exclusive economic zone incorporating by reference a legal analysis set forth 8 years earlier in a letter bearing the seal of the United States Secretary of Transportation.

From a Mexican standpoint, the Third Circuit decision reflects an official United States' position that the United States does not recognize Mexico's jurisdiction and sovereignty over its exclusive economic zone under Mexican and international law.

The MoFA letters forcefully demonstrate the Mexican Government's disagreement and dissatisfaction with that intrusion by the American court into foreign policy matters of vital interest to both countries. It follows that if a separation of powers analysis of the act of state doctrine was appropriate, Petitioners and the Mexican Government have now demonstrated ample basis for the application of the act of state doctrine. The removal order should be treated as a valid act of the Mexican Government under Mexican and international law without further judicial scrutiny by our courts. It is clear beyond argument that Protexa was bound to comply with the order from its government. Our courts are similarly bound to respect the order, and the government that issued it.

CONCLUSION

For the foregoing reasons, as well as the reasons stated in the Petition, Petitioners respectfully request that this Court grant its petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Dated: October 11, 1994

SUPPLEMENTAL APPENDIX A — LETTER DATED SEPTEMBER 15, 1994 TO MR. HARPER FROM MIGUEL ANGEL GONZALEZ FELIX

Re: Grupo Protexa, S.A. et al.
vs. All American Marine Slip, et al
Civil Action No. 86-4212

Mexico 15th September 1994.

Mr. Conrad Harper
Legal Adviser of the U.S.
Department of State
Office of the Legal Adviser
U.S. Department of State
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Dear Mr. Harper,

We write to comment on a judicial decision recently rendered in a United States Federal Court in the State of New Jersey in the matter referenced above.

The case involved the wreck of the Mexican vessel "Huichol II" in December 1985, which at the time of the incident was owned by Grupo Protexa ("Protexa"), a Mexican corporation. The wreck came to rest approximately 50 miles off the coast of the Port of Carmen, within the restricted zone that surrounds the oil exploration fields that are being developed by Petroleos Mexicanos within the limits of Mexico's Exclusive economic zone ("EZZ") on the sea bed and its subsoil and which in this particular case are on our wide continental shelf, opposite the State of Campeche.

Supplemental Appendix A

For your records I would like you to consider that I am sending to the relevant Court's Clerk a note in the following terms:

> "That for all the reasons stated in the september 15, 1986 opinion letter of the Director General de la Marina Merchante of the Secretariat of Communications and Transport, we respectfully submit that Mexican Government acted within its authority under Mexican and International Law, when it ordered Grupo Protexa to raise and remove the Huichol II of the Campeche Oil Fields".

We could make some specific points to the Court which we hope your Office could support, for example:

The United States of America, after the adoption of the UN. Convention on the Law of the Sea (UNCLOS III), which admittedly, has not yet been ratified, is bound however, not undermine the object and purposes of this Convention. The U.S. Government has raised doubts about certain parts of UNCLOS, but never has the U.S. Government reserved his position regarding neither:

> a) the jurisdiction of coastal States for the protection and preservation of the marine environment (Art 56, b)iii) of the UNCLOS III), including the right of States to take and enforce relevant measures beyond the territorial sea (UNCLOS Art. 221 and others relating to Part XII of the same).
>
> b) the sovereign rights of States to explore, exploit,

conserve and manage the natural resources of the seabed and its subsoil and with regard to other activities for the economic exploitation of the EEZ.

On the other hand, international maritime law has traditionally acknowledged the authority of States over vessels flying its flag, therefore the authority exercised by Mexican authorities should be internationally respected.

Conventions on the High Seas and the Continental Shelf, which the United States has ratified, give ground to assert Mexican authority. Nationally, Mexico's Political Constitution, (Art. 27, paragraphs 4, 5, 6, and 8) as amended in 1976, establishes relevant and consistent principles which are in turn reflected, inter alia, in varios laws such as:

–Ley Regiamentaria del Párrafo Octavo of Article 27 of our Constitution, regarding the EEZ, of 13 february 1976;.

–Ley Federal del Mar (Chapters 4th and 5th, O.J. 8th January 1986);

–Ley General del Equilibrio Ecológico y la Protección al Ambiente, in force since 1988.

Moreover the notion of jurisdiction over vessels flying national flags has never been questioned. This principle is consistent for instance with:

a) Article 5 of the Criminal Code for the Federal District and for the Republic, considers as crimes and offenses those commited by Mexicans or foreigners in the high

seas aboard a national vessel (O. J. 14 August, 1931).

b) Article 169 of the Ley de Vias Generales de Comunicación, grants authority to the Secretariat of Comunicaciónes y Transportes over issues relating to navigation aboard non military Mexican vessels; article. 231 of the Ley de Vias Generalee de Comunicación submits to the national government the authority to inspect Mexican vessels, previous judicial order to do so (Art. 232, IX);
The Ley General de Bianas Nacionales.

c) Art. 2 of the Ley de Navegación y Comercio Maritimo (O.J. 21 november 1963), which states that Mexican vessels in the high seas are considered Mexican territory.

Let me thank you in advance for the attention your office might give to this matter. I hope to be able to see you at the fifth legal advisor's meeting in New York, next October.

Yours sincerely,

s/ Miguel Angel Gonzalez Felix
Lic. Miguel Angel Gonzalez Felix
Consultor Juridico

AMO/GGGG